

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WENDY ANN McCLOSKEY, Executrix	)	Civil Action No. 3:2009cv00219
of the Estate of ARTHUR L. PARTNER,)	
and PATRICIA A. PARTNER, in her own)	
right,)	
)	
Plaintiffs,	)	MOTION TO INTERVENE AS A
	)	DEFENDANT PURSUANT TO RULE 24
vs.)	
)	
ALLIS-CHALMERS PRODUCTS	)	Filed on behalf of The Lincoln Electric
LIABILITY TRUST,	)	Company
BUFFALO PUMPS, INC.,)	
CARRIER CORPORATION,	)	Counsel of Record for This Party:
CLEAVER BROOKS, INC.,)	
FARREL CORPORATION, f/k/a Farrel-	)	David E. Lamm, Esquire
Birmingham,	)	PA I.D. #49532
VIAD CORPORATION, f/k/a The Dial)	
Corporation, individually and as	)	Davies, McFarland & Carroll, P.C.
successor-in-interest to Griscom-Russell	)	Firm #281
Company,	)	One Gateway Center, 10th Floor
	)	Pittsburgh, PA 15222-1416
Defendants.)	
	)	(412) 281-0737
)	
)	
)	
)	

DEFENDANT THE LINCOLN ELECTRIC COMPANY'S MOTION TO INTERVENE AS
A DEFENDANT PURSUANT TO RULE 24

AND NOW, comes Defendant, The Lincoln Electric Company (hereinafter referred to as "Lincoln"), by its attorneys, Davies, McFarland & Carroll, P.C., and files the following Motion to Intervene as a Defendant Pursuant to Rule 24 of the Federal Rules of Civil Procedure in this action and to file the attached Answer pursuant to Rule 24(l)(B):

1. Lincoln moves for leave to intervene as a Defendant in this action and to file the attached Answer (See attached Answer, Cross-Claims and Reply to Cross-Claims as Exhibit “A”). Pursuant to Rule 24(1)(B), Lincoln has a claim or defense that shares with the main action a common question of law or fact.

2. On or about August 6, 2009, Plaintiffs filed the instant action in the U.S. District Court for the Western District of Pennsylvania (“Johnstown”) at 3:09-cv-00219-KRG on behalf of Wendy Ann McCloskey, Executrix of the Estate of Arthur L. Partner, and Patricia A. Partner, in her own right, alleging that Arthur L. Partner developed mesothelioma as a result of having been exposed to asbestos while serving aboard the USS Vernon County LST-1161. (See attached Complaint as Exhibit “B”).

3. On or about November 25, 2008, Plaintiffs filed an action in the Court of Common Pleas of Cambria County, Pennsylvania on behalf of Wendy Ann McCloskey, Executrix of the Estate of Arthur L. Partner, and Patricia Ann Partner, in her own right, alleging that Arthur L. Partner developed mesothelioma as a result of having been exposed to asbestos from his employment as a lineman and maintenance man at PPG Industries Tipton from 1973 until 2002. Lincoln is a named defendant, among others, in this action. (See attached Complaint as Exhibit C).

4. Plaintiffs contend that the decedent was exposed to asbestos from Lincoln’s welding consumables which allegedly contributed to his disease which Lincoln denies.

5. The Plaintiffs should be precluded from maintaining two separate actions arising out of the same alleged injury, i.e. mesothelioma from exposure to asbestos. See *Haley v. City of Camden* 650 F.Supp.2d 349 (DNJ 2009) citing *E.E.O.C. v. Waffle House, Inc.*, 534 US. 279, 297,

122 S.Ct. 754, 151 L.Ed.2d 755 (2002) (internal citations and punctuation omitted) and *Fineman v. Armstrong World Industries, Inc.*, 980 F.2d 171, 218 (3d Cir.1992). See also *Gore v. Clearwater Shipping Corporation*, et al. 378 F.2d. 584 (3d Cir. 1967) and *MacDonald v. United States of America*, 781 F.Supp 320 (E.D.Pa. 1991). See also *Homart Development Co. v. Sgrenci* 443 Pa Super 538, 662 A.2d. 1092 (1995).

WHEREFORE, the Defendant, The Lincoln Electric Company respectfully respects that it be permitted to intervene as a Defendant in this matter, in part to seek disposition with respect to the maintenance of two separate actions.

Respectfully submitted,

DAVIES, McFARLAND & CARROLL, P.C.

BY /s/ David E. Lamm

David E. Lamm, Esquire
PA I.D. #49532
One Gateway Center
Tenth Floor
Pittsburgh, PA 15222
(412) 281-0737

Attorneys for Defendant,
The Lincoln Electric Company

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

IN RE ASBESTOS PERSONAL
INJURY LITIGATION

Civil Action No. 3:2009cv00219

This document applies to:

**WENDY ANN MCCLOSEY, Executrix of
the Estate of ARTHUR L. PARTNER, and
PATRICIA ANN PARTNER, in her own right,**

ORDER OF COURT

On this _____ day of _____, 2010, upon consideration of the
The Lincoln Electric Company's Motion to Intervene, it is hereby ORDERED that The Lincoln
Electric Company is granted leave to intervene as a defendant in this matter. The copy of
Defendant's Answer, Cross-Claims and Reply to Cross-Claims to Plaintiffs' Complaint attached
as Exhibit "A" to the Motion to Intervene is accepted as filed by the Court.

BY THE COURT:

_____, J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT THE LINCOLN ELECTRIC COMPANY'S MOTION TO INTERVENE** was served upon the following Plaintiffs' counsel of record via U.S. Mail and electronic mail and defense counsel of record via electronic mail, the 19th day of May, 2010:

Mark C. Meyer, Esquire
GOLDBERG, PERSKY & WHITE, P.C.
1030 Fifth Avenue, Third Floor
Pittsburgh, PA 15219
(Counsel for Plaintiffs)

DAVIES, McFARLAND & CARROLL, P.C.

BY /s/ David E. Lamm

David E. Lamm, Esquire – PA ID #49532
One Gateway Center
Tenth Floor
Pittsburgh, PA 15222
(412) 281-0737

Attorneys for Defendant,
The Lincoln Electric Company